



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 10, 1993

Mr. Brian N. Hail  
Cowles & Thompson  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3793

OR93-516

Dear Mr. Hail:

The Town of Addison (the "town"), which you represent, received a request for information concerning disciplinary actions involving an Addison police officer and requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a. You claimed that sections 3(a)(8) and 3(a)(11) except the requested information from required public disclosure. Because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 3(a)(11) exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now consider the additional arguments you have submitted for withholding the requested documents under sections 3(a)(8) and 3(a)(11) of the act. We have assigned your request ID# 18715.

You claim that the names and statements of witnesses are excepted from required public disclosure by section 3(a)(8) of the act, which excepts from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Traditionally, when applying section 3(a)(8), our office has distinguished between cases that are still under active investigation and those that are closed. In cases that are still under active investigation, this section excepts from disclosure all information except that

generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1977). Once a case is closed, however, information may be withheld under section 3(a)(8) only if its release "will unduly interfere with law enforcement or crime prevention." *See* Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 434, 444 (1986). Even if a matter is closed, the names of witnesses may be withheld under certain circumstances. Open Records Decision No. 297 (1981). The names of these persons and their statements may be withheld if it is determined:

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 252 (1980) at 4.

We have examined the documents submitted to us for review and conclude that there is cause to believe that disclosure of the names of witnesses and their statements would subject them to intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers. Release of such information would "unduly interfere with law enforcement or crime prevention." Accordingly, the names of witnesses and their statements may be withheld from required public disclosure under section 3(a)(8) of the act.

You also seek to withhold some of the requested information under section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 3(a)(11) exception in light of the *Gilbreath* decision and held that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass routine internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. As the information submitted to us for review relates to a city administrative or personnel matter, *i.e.*, an investigation into allegations of employee misconduct, it does not fall within the ambit of the section 3(a)(11) exception.

We note that you must withhold some of the information pursuant to section 3(a)(17)(A), which excepts from disclosure:

the home addresses or home telephone numbers of each official or employee or each former official or employee of a governmental body except as otherwise provided by Section 3A of this Act, or peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code.

Section 3(a)(17) makes confidential by law a peace officer's home address and telephone number. *See* Open Records Decision No. 516 (1989) (Section 3(a)(17) exempts information on peace officers to protect these public employees from harassment related to their occupation). You must delete such information from the documents submitted for our review. The remainder of the requested information must be released, except as noted above.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/GCK/jmn

Enclosures: Open Records Decision No. 615

Ref.: ID# 18715

cc: Mr. Bruce A. Shillinglaw  
726 Bentwood Drive  
Lewisville, Texas 75067  
(w/o enclosures)